IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

Crl.Rev.Pet.No. 190 of 2000()

CRA.89/1996 of ADDL. SESSIONS COURT, ALAPPUZHA
CC.35/1992 of JUDL.MAGISTRATE OF FIRST CLASS, AMABALAPUZHA
.....

REVN. PETITIONER: APPELLANT/ ACCUSED

R.SANKARANKUTTY NAIR,
LEKSHMI NIVAS, DEVASWAM KARICHIRA
PALLATHURUTHY, ALAPPUZHA.

BY ADV. SRI.P.VIJAYA BHANU
SRI.S.R.MANOJ

RESPONDENT: RESPONDENT/ COMPLAINANT

STATE OF KERALA, REP.BY
PUBLIC PROSECUTOR, HIGH
COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.AMJAD ALI.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 09/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRL.RP. NO.190/2000

ORDER ON CRL.MP. NO.1076/2000 IN CRL.RP. NO.190/2000

DISMISSED

09.08.2007 **SD/- K.R.UDAYABHANU , JUDGE**

/TRUE COPY/

P.A. TO JUDGE

tss

K.R.UDAYABHANU, J.

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Crl.R.P.No.190 of 2000

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Dated this the 9th day of August, 2007

O R D E R

The revision petitioner is the accused in C.C.No.35/1992 in the file of the Judicial Magistrate of the First Class-I, Ambalapuzha, with respect to the offences under Sections 409 and 463 I.P.C and stands convicted and sentenced to undergo rigorous imprisonment for three years for the offence under Section 409 I.P.C and to undergo rigorous imprisonment for one year for the offence under Section 463 I.P.C.

2. The prosecution case is that the accused the then Secretary of the Paravoor Service Co-operative Society No.1214, on 19/07/1985 misusing his official powers withdrew Rs.1,300/- from the Savings Bank Account No.469 held by PW.2 by making a false voucher in the name of PW.2, and thus committed criminal breach of trust and forgery.

3. The evidence adduced in the matter consisted of the testimony of PWs.1 to 7 and Exts.P1 to P10. Admittedly, the offence was detected on 01/09/1990 vide Ext.P1 report at the

instance of PW.1, the Assistant Registrar of Co-operative Vigilance Squad. It is the evidence of PW.1 that he had conducted a surprise inspection . But as to the action taken there is no consistent evidence. PW.5, the Administrator has stated that the accused was already under suspension when he took charge with respect to the above defalcation. PW.3, the present Secretary has stated that the accused was placed under suspension with respect to the shortage of stock of fertilizers and insecticides at the society. Ext.P4 is the voucher allegedly signed by PW.2, the account holder and initialed by the then Secretary, the accused. The entry in Ext.P5 cash book that is Ext.P5(a), initial in Ext.P4 have said to be that of the accused and the signature in Ext.P4 is not that of PW.2, the account holder on comparing Ext.P3, the application filed by PW.2 for starting the account. As pointed out by the counsel for the revision petitioner, there is no evidence with respect to the handwriting of the accused in Ext.P3 or Ext.P5(a). The only evidence in this regard is that of PW.3, the present Secretary and PW.4, the attender. Of course, the signature of PW.2 appears to be entirely different in Exts.P4 and P3. The absence of expert evidence in this regard is a factor that weaken the case set up by

the prosecution. It is also pointed out that no attendance register was produced. Hence, it has not been established beyond reasonable doubt that the accused was on duty on the date of withdrawal of the amount from the account of PW.2. It is admitted by PW.3 that on the date when the Secretary was on leave, it will be the clerk who would be attending the duties of cash. PW.3 was the clerk then. It is also pointed out that the entire entries in Ext.P5 is in the handwriting of PW.3. Another serious discrepancy pointed out is that the pass book of PW.2 with respect to the account, although, admittedly seized by PW.6, the A.S.I of the concerned police station, the same was not produced. I find that the same is a significant omission as the absence of withdrawal by PW.2 would have been positively established by the production of the pass book. If the entry is found with respect to the withdrawal in the pass book the same would have absolved the accused all together. I find that the above circumstances have not been properly clarified and there is no explanation for withholding the attendance book and the pass book. In the circumstances, I find that the accused is entitled for the benefit of doubt.

In the result, the conviction and sentence imposed by the courts below is set aside, the accused is acquitted.

The criminal revision petition is allowed as above.

Sd/-
K.R.UDAYABHANU,
Judge

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K.R.UDAYABHANU, J.

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Crl.R.P.No.190 of 2000

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O R D E R

9th August, 2007